

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Petition For Declaratory Ruling ) WC DOCKET NO. 02-361  
That AT&T's Phone-to-Phone IP Telephony )  
Services Are Exempt From Access Charges )

**COMMENTS OF THE  
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION**

**Introduction**

On October 18, 2002, AT&T petitioned the Federal Communications Commission (Commission) for a declaratory ruling that the phone-to-phone IP telephony services that AT&T offers are exempt from the access charges applicable to circuit-switched interexchange calls. In its Petition for Declaratory Ruling (Petition), AT&T asks that the Commission declare that providers of Voice over Internet Protocol (VoIP) services carried over the Internet are entitled to subscribe to local services and are exempt from interstate access charges unless and until the Commission adopts regulations that prospectively provide otherwise. (FCC Public Notice DA 02-3184, issued November 18, 2002.) The New Hampshire Public Utilities Commission (NHPUC) is pleased for this opportunity to comment on AT&T's request. The NHPUC asks the Commission to deny AT&T's request.

**Discussion**

AT&T is asking the Commission to extend the ISP exemption to any company that makes use of the Internet in any portion of

its business. This position is not supported by the documents AT&T cites in its Petition. First, AT&T attempts to paint the Commission's entire Universal Service Report to Congress<sup>1</sup> as tentative because the Commission wanted to reserve its right to consider emerging services in the context of a more complete record. This approach is misguided, as AT&T is requesting that the Commission revise the findings of the report, without new evidence and without the record that the Commission desired. Second, AT&T seeks a ruling that would lead to the elimination of access charges, without making an argument that would support a major policy change in the compensation paid to local exchange carriers for the use of their facilities by other carriers. Third, AT&T argues that differing decisions among the several states constitute a crisis requiring Commission intervention at this time. To the contrary, differing decisions among the states reflect the valid differences in intrastate jurisdiction allowed by the Telecommunications Act.

1. The Universal Service Report Does Not Support AT&T's View

Contrary to AT&T's reading of the Universal Service Report, it contained much information to suggest that phone-to-phone Internet Protocol (IP) telephony service, or toll service delivered using the Internet, is telecommunications service. For instance, in Paragraph 53 the Commission states:

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<sup>1</sup> *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd. 11,501 (1998) (Universal Service Report).

The regulatory classification of protocol processing is significant to the provision of universal service only to the extent that it affects the appropriate classification of Internet access service and IP telephony. We find, however, for the reasons explained below, that Internet access services are appropriately classed as information services without regard to our treatment of protocol processing. Similarly, *our discussion of the regulatory status of phone-to-phone IP telephony is not affected by our resolution of the protocol processing issue.* The protocol processing that takes place incident to phone-to-phone IP telephony does not affect the service's classification, under the Commission's current approach, because it results in no net protocol conversion to the end user. (emphasis supplied)

Further, Paragraph 59 states: "A telecommunications service is a telecommunications service regardless of whether it is provided using wireline, wireless, cable, satellite or some other infrastructure. Its classification depends rather on the nature of the service being offered to customers."

And while the Commission noted that it was not making any definitive pronouncement in the absence of a more complete record, it did indicate how it planned to proceed, in Paragraphs 88 and 89:

88. "Phone-to-phone" IP telephony services appear to present a different case. In using the term "phone-to-phone" IP telephony, we tentatively intend to refer to services in which the provider meets the following conditions: (1) it holds itself out as providing voice telephony or facsimile transmission service; (2) it does not require the customer to use CPE different from that CPE necessary to place an ordinary touch-tone call (or facsimile transmission) over the public switched telephone network; (3) it allows the customer to call telephone numbers assigned in accordance with the North American Numbering Plan, and associated international agreements; and (4) it

transmits customer information without net change in form or content.

89. Specifically, when an IP telephony service provider deploys a gateway within the network to enable phone-to-phone service, it creates a virtual transmission path between points on the public switched telephone network over a packet-switched IP network. These providers typically purchase dial-up or dedicated circuits from carriers and use those circuits to originate or terminate Internet-based calls. From a functional standpoint, users of these services obtain only voice transmission, rather than information services such as access to stored files. The provider does not offer a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information. Thus, the record currently before us suggests that this type of IP telephony lacks the characteristics that would render them information services within the meaning of the statute, and instead bear the characteristics of telecommunications services.

The service for which AT&T requests exemption from access charges applicable to circuit-switched interexchange calls is voice service as defined by the Commission in the Universal Service Report. AT&T holds itself out as providing voice telephony; the service does not require the customer to use different CPE; the service allows the customer to dial telephone numbers in accordance with the NANP; and it transmits the calls without net change in form or content.

In carving out the ISP exemption, the Commission stated that "it is not clear that the ISPs use the public switched network in a manner analogous to IXCs". (See, *Access Charge Reform, First Report and Order*, at ¶ 345). AT&T turns this logic on its head, arguing that if an IXC uses any Internet-related technology in the performance of its fully mature product

offering, it then becomes an "evolving" service that should receive the same protection as the nascent and developing Internet services that the Commission and Congress rightly decided to protect.

## 2. Access Charge Policy Should Not Be Decided in This Case

AT&T is clear about why it is looking for such an exemption: "by allowing voice and data to be transmitted over a single network, these investments can produce enormous efficiencies..." (Petition, Page 10) According to AT&T's annual report for 2001, AT&T spent over \$12 billion on interstate access last year. It is AT&T's second-largest operating expense. Naturally AT&T would like that expense to be reduced as much as possible for its shareholders. It can do this only if the Commission takes the extreme view that, even if a long distance carrier uses traditional facilities for a mature service, if at any point in the transmission of the call, the carrier hands the call off to an IP-based server, translates it to IP and back again (even if only for a few feet), the traditional, mature service is transformed into something other than a long distance call.

Essentially, AT&T seeks to eliminate access charges completely over time. While the NHPUC does not support elimination of access charges, if the Commission wants to pursue this policy, it should do so explicitly and on the merits. We urge the Commission not to put its imprimatur on bypass efforts

that are clearly devised for the sole purpose of avoiding the payment of access charges.

### 3. There Is No Controversy Requiring FCC Intervention

AT&T goes on to point out its belief that the Commission's decision on access charges for interstate VoIP calls should be mirrored by the states, and calls it "a controversy" that different states have reached different opinions on the matter. The NHPUC respectfully suggests that definitional questions such as those raised by AT&T would be less controversial, not more controversial, if the Commission refrained from its assertion of jurisdiction over intrastate calls that are bound for the Internet. In any event, the constructive solution of the issue of access charges for VoIP calls would be assisted rather than impeded if the Commission were to observe the clear jurisdiction that the Telecommunications Act of 1934 ceded to the states.

New Hampshire is a small state. AT&T and most other carriers have a single switch in New Hampshire. It is probable that long distance calls between New Hampshire customers that are carried by AT&T use leased facilities to get to AT&T's switch, and leased facilities to go from AT&T's switch to the terminating end-user. A call from Pittsburg, New Hampshire's northern-most locale, to Pelham in the far south, would travel using traditional switching technology to Manchester, where AT&T's switch is located. AT&T could route the call a few feet to its IP servers and back to its switch, and direct the call out to the terminating end user. AT&T would have the Commission claim

jurisdiction over this call, and exempt it from access charges. Even if AT&T uses IP protocol to move the call from the Pittsburgh CO to the Pelham CO, it is still a traditional long distance call, indistinguishable from those of other long distance carriers routing similar calls.

While the new technologies can blur the line of distinction between jurisdictions and create new issues in the separation of responsibility between state and federal commissions, long distance calling is not a new technology, and the insertion of a new technology in its routing does not change the nature of that calling. These calls use the same long lines; they use the same legacy network. They simply use a different transmission protocol for part of the transport of the call. If the Commission were to determine that such calls are something other than telecommunications services, they will implicitly dismantle the access charge structure, and will ultimately enable every long distance carrier to claim exemption from access charges.

## **Conclusion**

AT&T has made no new or convincing arguments to supplement the record before the Commission to alter the Commission's tentative conclusions in its 1998 Universal Service Report to Congress. In fact, AT&T has demonstrated clearly that the Commission's tentative conclusions should be made permanent and that a telecommunications service is a telecommunications service regardless of how it is transmitted, and should continue to be

subject to circuit switched access charges when carried, in part,  
over another carrier's network.

Respectfully Submitted  
NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

By: /s/ Barclay Jackson  
Barclay Jackson, Esq.  
Staff Attorney  
8 Old Suncook Road  
Concord, NH 03301  
603-271-6045  
bjackson@puc.state.nh.us